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CASE & COMMENT

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Yours very truly,

AUGUSTUS J RICKS

U S Dist Judge N Dist O

To
THE LAWYERS' CO-OP PUB CO
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On approval---See colored inset.

Don A. Pardee

PORTRAIT SUPPLEMENT.—"CASE AND COMMENT."
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Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS
INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED
LEGAL NEWS NOTES AND FACETIÆ

VOL. 4 DECEMBER, 1897. No. 7

CASE AND COMMENT

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THE LAWYERS' CO-OPERATIVE PUB. CO.,
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Don A. Pardee.

Of all the judges of the Circuit Courts of the United States, the senior in commission and service is Don A. Pardee of the fifth circuit, which embraces Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas. He was appointed and commissioned in May, 1881, by President Garfield. His decisions first appeared in Vol. 9 of the Federal Reporter and extend over the whole series subsequent thereto.

Don A. Pardee was born on the 29th of March, 1837, in Wadsworth, Medina County, Ohio. His father, Hon. Aaron Pardee, who was then and still is a practising lawyer, was born in Skaneateles, Onondaga County, N. Y., in 1808, of Kentucky ancestry, and received his general education in the public schools of the vicinity and at the United States naval academy at Annapolis. Judge Pardee read law in his father's office and was admitted to the bar in November, 1859. Thereafter he practised law at Medina, Ohio, until the breaking out of the Civil War, when he entered the volunteer service. He served in the army from September, 1861, to December, 1864, as major and lieutenant colonel of the 42d Ohio Volunteer Infantry. In 1865 he settled in New Orleans and opened a law office. He was appointed register in bankruptcy in 1867. He was elected judge of the second judicial district of the state of Louisiana in 1868; was re-elected in 1872, and again in 1876, serving three full terms of four years each. He was elected and served as a senatorial delegate to the constitutional convention of Louisiana in 1879 and participated in framing the present Constitution of that state. He was the Republican candidate for attorney general of the state of Louisiana in 1880.

The judicial career of Judge Pardee has been a notable one, as it has included twelve years on the bench of a state court and already approaches seventeen years on the bench of the United States circuit court and circuit court of appeals. His distinguished appearance clearly indicates his intellectual strength. As an adopted son of Louisiana, he gained reputation, respect, and honor among the people of that state, and as a judge of the United States court, he has gained a wider reputation that is still increasing. While he is the senior judge of the circuit courts in respect of service, and has been more than twenty-eight years on the bench, he is still but little past sixty years of age, and his judicial career, which has been eminent for ability, bids fair to become most extraordinary in period of service.

The Last of the Barons.

The death of Sir Charles Edward Pollock a few days since removed the last of the English barons of the exchequer. For the first time in about 600 years the title "Baron" is missing from the roll of English judges. In the words of the "London Law Journal:" "We cannot help regarding it as a matter for regret that so ancient a title shall no longer be borne by any member of the bench." But Baron Pollock was worthy to stand in history as the last of the name by whom the type should be remem-

bered. His service on the bench, lacking only a few days of twenty-five years, earned the apparently unanimous tribute of bench and bar that "he illustrated in his own person the highest traditions of the bench," that he was "an upright judge whose great desire was to do justice," "a very learned judge, a very conscientious, upright, and painstaking judge," "a judge possessing great judgment and fine discretion," and that "the kindness and consideration which never failed him under any circumstances of weariness, of irritation, or annoyance enabled him to show how an English judge could exhibit in his highest office the finest characteristics of an English gentleman." Honorable pride in his distinction as "the last of the barons" led him to decline a higher position in the court of appeal.

He was a son of Chief Baron Pollock, and it is said that his family has supplied the bar with a greater number of distinguished men than any other.

Incongruous Precedence.

England's judges are England's pride, but "The London Law Times," in mentioning that the Queen has directed that children of legal peers shall in the future have the title of Honorable, and have precedence immediately after the younger children of barons and immediately before baronets, says that the eldest son of an hereditary baron has precedence of Knights of the Garter, privy chancellors, and judges. A brainless and disreputable youngster labeled with a name may thus be placed higher in the official scale of honor than a great English judge. Although *non quieta movere* is the embodiment of much philosophy, especially in a nation whose constitution itself is a bundle of precedents, Englishmen will not always preserve such an incongruity because of its antiquity.

Poll-Tax Conditions of Voting.

A charter provision making the payment of poll taxes a condition of the right to vote at a village election is considered in a written opinion by David B. Hill published in "The Albany Law Journal," in which he concludes that the provision is unconstitutional. He cites authorities from several states on the general proposition that the legislature cannot change the constitutional qualifications of voters, but none on the specific question of the validity of provisions respecting payment of poll taxes.

Some authorities on this matter, including cases from the courts of Delaware, Florida, Kentucky, Massachusetts, and Pennsylvania, are to be found in a note to State *v.* Short (Md.) 29 L. R. A. 414. The conditions were held valid in these cases on the ground that they were created or authorized by provisions of the state Constitutions. In the absence of such constitutional authority, the recent case of Kansas City *v.* Whipple (Mo.) 35 L. R. A. 747, clearly shows that such restrictions on suffrage are unconstitutional. This held that a peculiar provision in a city charter which in effect imposed a poll tax on every male person over twenty-one years of age if he failed to vote was void, not only as an unconstitutional discrimination, but as an invasion of the sovereign right of suffrage.

Reckless Labor Legislation.

If no "fake" or reckless labor statutes were passed the courts would in the main appear to be, as in fact they are, friendly and fair towards labor interests. The law makers who will pander to folly and ignorance by voting for unconstitutional measures in order to keep "solid" with the labor vote, knowing all the time that they are raising false hopes among the workingmen which must inevitably be disappointed by judicial decisions, are probably not very numerous. Doubtless there are more who are reckless in the matter, giving their votes to all measures asked by workingmen without much exercise of their own judgment. They may gain popularity by so doing, but they grievously wrong both the workingman and the courts. They deceive the former, while they force the latter into apparent hostility to labor by the necessary annulment of the worthless laws.

A typical case of ill-advised legislation is the Pennsylvania act of June 15, 1897, which was held void in Fraser *v.* McConway & T. Co. (C. C. D. Pa.) 82 Fed. Rep. 257. It attempted to lay a tax of three cents per day for any foreign-born, unnaturalized, male person employed in that State. This the court necessarily held unconstitutional as a denial of the equal protection of the laws to such laborers. Protection of workingmen against competition by the most ignorant foreigners whose wages will not maintain a decent home is earnestly

to be sought. But labor legislation seems to be too often regarded as a mere sop to the labor vote, which serves its purpose if it be sweet in the mouth although it prove bitter farther down. It is time for the legislative brain and conscience to free such questions from insincerity and humbug, and get hold of them with the largest intelligence and honesty.

Doing Their Whole Duty.

The humorous element in the overruling of a supreme court by a lower court led us a short time ago to make a supposedly facetious item respecting two special judges of a Texas court of civil appeals who expressly overruled the supreme court. A correspondent refers us to article 1011*a* of the Texas Revised Statutes, which names among the cases which may be taken by writ of error to the supreme court those "in which a civil court of appeals overrules its own decisions or the decisions of another court of civil appeals or of the supreme court." Therefore the judges referred to did no more than the statute contemplated that they might do. The case was that of New York Life Ins. Co. *v.* Smith, 41 S. W. 680.

The law of a subject is not often given permanent form by a decision which overrules a higher court, but this case is likely to prove an exception in that respect, since it follows a decision of the Supreme Court of the United States on a Federal question. It holds that a state law cannot constitutionally impose a penalty of 12 per cent and attorneys' fees on any life or health insurance company for failure to pay a loss within the stipulated time after demand, when the provision does not apply to fire or marine companies or to mutual benefit societies. The decision of the United States Supreme Court in Gulf, C. & S. F. R. Co. *v.* Ellis, 165 U. S. 150, 41 L. ed. 666, holding it unconstitutional for a state statute to impose attorneys' fees on railway companies for delay in the payment of claims, seems clearly to govern the matter. We are informed that the insurance case is not to be taken to the state supreme court, but it may be reasonably expected that that court, in view of the Federal decision, will approve of this decision when the question arises again. The dissenting judge in this case contended that the statute was valid as against a foreign insurance company on the ground that "it must be held to prescribe the conditions upon which they are permitted to do business in the state." But the ground of the Federal decision was that such a statute denied the corporations affected by it equal protection of the laws, and it cannot be doubted that foreign corporations are entitled to such protection.

Interstate Sales by Corporations.

The right of a foreign corporation to send goods into a state and sell them without being compelled to get a license for the privilege or to comply with the various conditions of the right which may be imposed by statute is plain. In Kindel *v.* Beck & Pauli Lith. Co. (Colo.) 24 L. R. A. 311, there was an attempt to defeat an action by a foreign corporation for the contract price of goods shipped from another state because the corporation had not filed a certificate which was required by state law as a condition of the right to do business in the state, but the court said: "To give the state Constitution and statutes the construction claimed by appellant would be to permit a state to regulate commerce among the states, authority for which is conferred exclusively upon Congress." In a note to that case are other decisions to the same effect. In Judge Thompson's great work on Corporations, Vol. 6, § 7936, he declares that such statutes are not allowed to restrict the ordinary operation of commerce although conducted by corporations across the boundary lines of the states of the Union, because to give them this effect would bring them into conflict with the settled interpretation put upon the commerce clause of the Federal Constitution; and he expressly applies this rule to the case of a sale of goods to a domestic citizen by a foreign corporation.

But in some states there are statutes declaring in the broadest terms that it shall be unlawful for a foreign corporation to transact any business of any kind without complying with certain regulations, which usually include the filing of a prescribed certificate. Delaware has just passed such an act declaring that it shall be a misdemeanor for a foreign corporation to transact any business within the state without having complied with such provisions. Such acts may be passed ignorantly, or they may be made purposely unconstitutional, or they may intend to except interstate commerce. In any case they are unenforceable as against such commerce. As applied to such a transaction the statutes are

so unequivocally void that any attempt to enforce them raises a strong suspicion of blackmail.

A printed circular sent from Delaware calling attention to the present statute contains the italicized statement that "*the sale of a single dollar's worth of goods in the state renders a foreign corporation amenable to the law.*" And also that the statute was intended to cover "*any single act of business* of any description done by a foreign corporation in any manner, *whether through a resident or traveling agent, or by correspondence,* within the state of Delaware." It adds that the officers having the enforcement of the statute in charge are proceeding on these lines. This circular comes from an attorney who announces that he will file the necessary certificates for the sum of $5 in addition to the fees, amounting to $3, which go to the state. An attempt to enforce the statute on this line will doubtless result in extorting payment of the unconstitutional demand from some foreign corporations which prefer to pay, even if they regard it as blackmail, rather than to defend any litigation; but the true motto for Americans (especially for lawyers) is "not one cent for tribute."

Equitable Protection of Personal Rights.

"Things, not men," is the true motto of a court of equity according to the common statement that equity concerns itself with property rights alone. If this were true it would show that equity jurisprudence was in a state of arrested development and belonged to a state of society which respected property but cared little for human life, deeming life less than meat, and the body than raiment. But the statement is not really true. If admitted to be the formal creed of equity, it is little more than a fossilized formula. Equity does constantly concern itself with personal rights, although it often gives them another name.

One class of exceptions in which equity does exercise jurisdiction to protect personal rights includes cases in which those rights are involved in a contract, trust, or breach of confidence. That distinction was recognized in the case of Corliss *v.* E. W. Walker Co. 57 Fed. Rep. 434, 31 L. R. A. 283, where the violation of confidence or a breach of trust was regarded as sufficient to sustain the jurisdiction of equity to prevent the publication of a man's portrait without his consent. So, the power of chancery to declare a marriage, as a mere civil contract, void for abduction, terror, or fraud is shown by cases cited in the note to Ridgeley *v.* Ridgeley (Md.) 25 L. R. A. 800. There are other cases enforcing the personal rights of husband and wife with respect to their marriage relation when they are provided for by valid contract. In all these cases equity protects mere personal rights on the same rules under which it acts in other cases for the protection of property rights.

Another very important exception is in respect to the protection by equity of the personal rights of infants, even as against their own parents, in order to insure them against brutality or immoral training. It controls the custody of children, even when there are no contract provisions respecting it. Marriage with an infant is prevented by injunction or punished as a contempt of court. This has been done many times in England, and an American instance of the kind is Aymer *v.* Roff, 3 Johns. Ch. 49. This power is usually said to be derived from the prerogative of the King as *parens patriæ*, but whatever its source, it is a recognized power of equity, and the rights protected are in the strictest and purest sense personal.

The protection of reputation, standing in the community, and the feeling of self respect is not generally recognized by the courts as a permissible exercise of equitable jurisdiction. Nevertheless such protection is in effect given in many cases. Injunctions against the publication of purely private letters, although usually based on the ground that a property right is involved, are really to prevent offensive publicity of private matters, the injury to feeling and the possible degradation or loss of standing that may result. The property value of the letter may not be in the slightest degree impaired by the publication enjoined. The same is true of injunctions against publication of portraits or similar invasions of the right of privacy. To call the rights involved in all these cases rights of property is in the nature of a pious fraud on the pretended rule which limits equity jurisdiction to matters of property.

The protection of life, health, and physical comfort is another exercise of equity jurisdiction which is not uncommon. Although this is usually connected with the protection of a property right as a secondary, or at least a nominal, consideration, injunctions to protect persons when ill from the loss of sleep and rest from some injurious noise can hardly be said to be based on any property right. In these and in other cases the property right, if it is considered at all, is merely the peg on

which to hang a cause of action for the protection of personal rights.

England has relieved her courts from any necessity of searching for rights of property on which to base their jurisdiction by a statute giving power to grant injunctions in all cases "in which it shall appear to the court to be just or convenient that such order should be made."

The sweeping rule that equity can have no jurisdiction except in matters of property seems to be based on *dicta* rather than decisions, as a case could hardly arise in which it was necessary to declare it. Such a rule is at least subject to many important exceptions, and has been also evaded by declaring some personal rights to be rights of property. Where it is clearly shown that a remedy at law for the protection of a conceded personal right is inadequate a court of equity may find some justification for protecting it in the fact that other courts have exercised such power, although they may not have claimed the power in express terms.

Local Bar Associations.

There is no more genial assemblage among men than is found at an annual dinner of a local bar association. A national, or even a state, organization brings together those who lack the personal acquaintance necessary to the highest social enjoyment. But the dinner of a county bar association, especially in a rural community, where every member knows nearly every other, is the place for perfect good fellowship.

Results of permanent and great value, as well as the passing pleasure of the occasion, come from such associations. The massing of the men of law, where each is both host and guest, for mutual courtesies and united tribute to their common profession, tends to quicken an honorable pride in that profession and a jealousy for its honor.

A typical and almost ideal occasion of this kind recently impressed us with the fact that the profession has in itself a means too little used, but the value of which can hardly be over-estimated, for stimulating its true spirit and diffusing in it the powerful leaven of the high character of its foremost men. This occasion was the annual dinner of the bar association of Cattaraugus County, N. Y. Hon. C. S. Carey, ex-solicitor of the United States treasury, admirably presided. Hon. C. Z. Lincoln, legal adviser of the governor and chairman of the committee on statutory revision, spoke to his old friends with great ability on "Lawmaking." Hon. Frank W. Stevens talked with wit, eloquence, boldness, and manly earnestness on "The Ethics of the Profession." Judge Alfred Spring of the supreme court, being in his home county and literally "in the hands of his friends," was compelled to speak to them, and his words grappled them to him "with hooks of steel." One of the youngest members of the bar, M. W. Ryder, spoke entertainingly on "Starting in." Other speeches helped to fill the occasion full of humor, geniality, and profit. This local gathering is thus referred to because it was a type of what ought to be annually enjoyed in every county of the United States, but which seems to be still somewhat rare. A little concerted action in this direction by some lawyers in almost any county would create a custom of having such an association dinner every year. If these were general and were well directed they would be a source, not only of much pleasure, but of incalculable benefit to the legal profession, and therefore to the people at large whom that profession serves. In the possibilities of such associations there is a latent power to quicken the pride, stimulate the honor, and, as an inevitable result, raise the standard of character among those who practice at the bar. The bar of any county that fails to take advantage of this force neglects a plain duty and a high privilege.

Index to Notes

IN

LAWYERS' REPORTS, ANNOTATED.

Book 37, Parts 3 and 4.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

The part containing any note indexed will be sent with CASE AND COMMENT for one year for $1.

Among the New Decisions.

Acknowledgment.

The fact that a notary public is secretary and treasurer of a corporation is held, in Horbach *v.* Tyrell (Neb.) 37 L. R. A. 434, insufficient to raise the presumption that he is a stockholder, or to make an acknowledgment of a mortgage to the company, which was taken by him, invalid.

Bills and Notes.

The subsequent insanity of the maker of notes given to aid the enterprise of providing a library building for a board of education is held, in School District *v.* Stocking (Mo.) 37 L. R. A. 406, insufficient to prevent liability on the notes, if the school district on the faith of the notes had expended moneys or incurred liabilities in promoting the enterprise. Such notes are held to be sufficiently delivered when placed in the hands of a third person to be delivered to the board of education when called for.

Carriers.

The right of a passenger to take packages of groceries for the use of his family with him into a passenger car is denied in Bullock *v.* Delaware, L. & W. R. Co. (N. J.) 37 L. R. A. 417, when the terms of his ticket entitle him to "personal passage." But it is held that the officers of the railroad company cannot lawfully take the packages away from him by force after he enters the car, although, if he refuses to remove them, he with his packages may be removed without unnecessary force.

Civil Service.

The order of the president that no removal shall be made from any position subject to competitive examination except for just cause and upon written charges is held in Carr *v.* Gordon (C. C. N. D. Ill.) 82 Fed. Rep. 373, and Taylor *v.* Kercheval (C. C. D. Ind.) Id. 497, not to have the force of law, although it is a regulation rightfully adopted by the executive, and that it confers upon the incumbent no vested right to hold office which will justify the court to interfere in case of his removal, but merely renders the officer disobeying such order responsible to the president and liable to be dealt with by him.

Conflict of Laws.

An order drawn by a married woman upon the executor of her father's estate is held, in Freeman's Appeal (Conn.) 37 L. R. A. 452,

to be subject to the laws of her domicil, where she signs the instrument and it is accepted in that state, although it is dated in another state and is mailed by an agent of the payee to the payee in another state.

Conspiracy.

The agreement of a plumbers' association to the effect that the members will not deal with wholesale dealers who sell to any persons who are not members of the association is held, in Macauley *v.* Tierney (R. I.) 37 L. R. A. 455, to be lawful, and not to constitute a conspiracy, since the object of the combination and the means adopted for its accomplishment are lawful.

Contracts.

A parol sale of growing timber is held, in Leonard *v.* Medford (Md.) 37 L. R. A. 449, not to relate to an interest in lands within the meaning of § 4 of the statute of frauds, and if the purchaser is placed in full possession, and commences performance of his contract, this is held sufficient to prevent repudiation of it by the seller on the ground that it is within § 17 of the statute relating to sales of other property above a specified value.

A loan of money made without the license required by the Idaho statute for doing such business is held, in Vermont Loan & T. Co. *v.* Hoffman (Id.) 37 L. R. A. 509, to be enforceable, as the statute merely makes the act a misdemeanor, and provides for suit to recover the license tax, and the act is neither *malum in se* nor *malum prohibitum*.

Descent.

The disability of an alien to inherit, imposed by the laws of a state, is held, in Opel *v.* Shoup (Iowa) 37 L. R. A. 583, to be removed, so far as the subjects of the King of Bavaria are concerned, by a treaty between the United States and Bavaria.

Explosions.

Keeping large quantities of dynamite and gunpowder in a wooden store in a thickly settled portion of an incorporated town, in close proximity to many buildings and persons, is held, in Rudder *v.* Koopmann (Ala.) 37 L. R. A. 489, to constitute a nuisance which will render the proprietor liable for damages caused to other persons in case of an explosion, even if this is due to a fire which originated without his fault on the premises of a third person.

But it is held also, in Kinney *v.* Koopmann (Ala.) 37 L. R. A. 497, that he will not be liable for damages of which the explosion was not the proximate cause, as, for the destruction of a building which would have caught fire and been destroyed from other causes independent of the explosion. Such a keeping of explosives is held to be prima facie negligence.

Fraud.

A representation that notes are as good as gold, made to induce a vendor to accept them as part of the purchase price of land, and intended and understood to be a representation of facts within the vendee's knowledge, of which the vendor knew nothing, is held, in Andrews *v.* Jackson (Mass.) 37 L. R. A. 402, to constitute an actionable false representation, and not merely an expression of opinion.

Gambling.

A constitutional provision requiring laws to prevent gambling is held, in People, Sturgis, *v.* Fallon (N. Y.) 37 L. R. A. 419, to be not necessarily violated by fixing the penalty for making or recording a bet on a horse race merely at forfeiture of the value of the wager, to be recovered in a civil action.

Hacks.

Discrimination between competing omnibus lines at a railroad depot, by giving one of them a more favorable stand than is allowed to the other, where both are given access to the grounds, is held, in Lucas *v.* Herbert (Ind.) 37 L. R. A. 376, insufficient to constitute any legal ground of complaint against the railroad company.

Injunctions.

An injunction against an appropriation on a municipal budget for the lawful purpose of removing garbage is denied in State, Badger, *v.* New Orleans (La.) 37 L. R. A. 540, at the suit of one who claimed to have a right to remove the garbage under a contract which is disputed and in litigation, although it is said that any party in interest may have an injunction against an appropriation for an illegal purpose.

Insolvency.

A deed of trust, and not an assignment for creditors, is held, in Tittle *v.* Vanleer (Tex.) 37 L. R. A. 337, to be made by an instrument transferring property to a trustee, with authority to sell and convey it in the name of the grantors, "with a provision for returning to them any surplus."

A chattel mortgage is held, in Sabin *v.* Wilkins (Or.) 37 L. R. A. 465, to be a part of an assignment for creditors, where, after the mortgage and before the assignment for creditors, there was a compromise agreement between the debtor and his creditors, although he said if he was attached he must execute an assignment, and his inability to carry out his part of the compromise agreement did result in an attachment and assignment.

Insurance.

An attempt to substitute as beneficiary of an endowment certificate in the Knights of Pythias a creditor in place of the member's widow and children is held abortive in Carson *v.* Vicksburg Bank (Miss.) 37 L. R. A. 559, because the constitution of the organization provides that the benefits are for persons related to or dependent upon the member, and that they shall never be appropriated to the payment of any debts against his estate.

An express promise of a benefit insurance contract to pay $3,000 upon maturity, and another stipulation that the amount obtained on a full assessment on the division when it has less than 1,200 members shall be a payment in full, are held, in Thuenen *v.* Iowa Mut. Ben. Asso. (Iowa) 37 L. R. A. 587, not to be void for repugnancy.

Life Tenants.

A peculiar and novel case of the postponement of the operation of a covenant by a reversioner during the existence of a life estate, when the life tenant did not join in the covenant, but did join in the conveyance, as well as in a later conveyance of other portions of the property, is found in Rochester Lodge *v.* Graham (Minn.) 37 L. R. A. 404, where the owner of a life estate in a city lot and the owner of a reversion, were erecting the first and second stories of a building, while a third person was erecting a third story under license from them, and they joined in conveying to him the third story, and the reversioner added a covenant to build and forever maintain the roof in consideration of a perpetual rent, after which both life tenant and reversioner conveyed the rest of the building to another person. It was held that the latter was in possession, so long as the life estate lasted, under the life estate, and that during that time the covenant of the reversioner could not be enforced against him.

Malicious Prosecution.

Maliciously entering judgment upon a judgment note against a solvent maker at ten o'clock at night, with the immediate issue of execution thereon, under which his store is broken into and his goods levied upon for the purpose of injuring and destroying his business credit and reputation, is held, in Doctor *v.* Riedel (Wis.) 37 L. R. A. 580, insufficient to make the creditor liable for malicious prosecution or abuse of process.

Master and Servant.

A statute requiring railroad companies on the discharge of an employee to pay all wages then earned at the contract rate without any abatement or deduction for payment before the time agreed upon, and that in default thereof the wages shall continue at the same rate until paid, but not to exceed sixty days unless action is commenced within that time, is sustained in St. Louis, I. M. & S. R. Co. *v.* Paul (Ark.) 37 L. R. A. 504; and it is also held that exemplary damages may be allowed for nonpayment of the wages.

Mortgage.

A chattel mortgage filed for record by the mortgagor before its acceptance by the mortgagee is held, in Rogers *v.* Head's Iron Foundry (Neb.) 37 L. R. A. 429, to take effect, as between them, if subsequently accepted, from the time of the first delivery, but not so as to persons who have acquired title to and interest in or a lien upon the property before its actual acceptance.

Municipal Corporations.

A statute allowing a city to acquire a water plant only by purchase from private parties, if it has given them a contract or franchise for a water supply, is held, in Helena Consolidated Water Co. *v.* Steele (Mont.) 37 L. R. A. 412, to be in violation of a constitutional provision against levying taxes upon inhabitants of a

municipality except for municipal purposes, and also a provision against imposing a liability in respect to transactions or considerations already past.

Nuisances.

See EXPLOSIONS, *supra*.

Parent and Child.

For the support of a minor son surreptitiously taken from the father by the mother after divorce without any decree as to the custody of the child, where he continues to live with the mother after her remarriage, it is held, in Foss *v.* Hartwell (Mass.) 37 L. R. A. 589, that the father cannot be held liable to the mother and her second husband merely because he has permitted the child to remain with them without any agreement or demand for compensation.

Partnership.

An agreement of a continuing partner to pay the firm debts on dissolution, although known to the creditor, is held, in National Cash Register Co. *v.* Brown (Mont.) 37 L. R. A. 515, insufficient to make the retiring member a mere surety so that a release of an attachment upon sufficient property of the continuing partner to pay the debt will release the retiring partner.

Party Wall.

A statute giving a lotowner the right to build one half of a wall not more than 18 inches wide, upon the land of his neighbor, and recover from the latter one half of the expense whenever he uses the wall, is regarded, in Swift *v.* Calnan (Iowa) 37 L. R. A. 462, as not free from doubt as to its validity, but is upheld as an exercise of the police power, in view of long recognition and enforcement.

The use of a party wall by one of two owners for the purpose of a sign which subjects the other owner to inconvenience and annoyance by leading persons to mistake his dwelling as a part of the former's business premises, was held in Bedell *v.* The Rittenhouse Co. (C. P.) 5 Pa. Dist. R. 689, to be ground for an injunction.

Railroads.

The liability of a railroad company for injury to a young child which strays upon the track because of the lack of a fence is sustained in Rosse *v.* St. Paul & D. R. Co. (Minn.) 37 L. R. A. 591, overruling a prior decision to the effect that the statute requiring fences was exclusively for the protection of domestic animals.

Statutes.

The signature of a bill by the governor after the adjournment of the legislature, if within ten days after its passage, although that was more than five days before adjournment, is held sufficient in Detroit *v.* Chapin (Mich.) 37 L. R. A. 391, under the Michigan Constitution providing that a bill shall become a law if not returned by the governor within ten days, Sundays excepted, after it has been presented to him, and that within five days after adjournment he may sign any act passed during the last five days of the session. With the case is a note reviewing the conflicting authorities as to the right of the executive to sign a bill after the adjournment of the legislature.

Street Railways.

Running an electric car at an unusually rapid rate over a much frequented crossing, when the usual rate was from 12 to 14 miles per hour, was held, in Evansville St. R. Co. *v.* Gentry (Ind.) 37 L. R. A. 378, to be such negligence as constitutes little less than wanton and reckless disregard of human life. But it is held that some slight proof, at least, of a want of contributory negligence was required in case of a man killed by the car and found about 45 feet from the crossing, at which he had stepped from another car.

The exemption of a street railway from a license tax is held, in Springfield *v.* Smith (Mo.) 37 L. R. A. 446, not to be granted by a mere grant of the privilege of operating the road for a term of years, if the license tax is imposed under statutory authority, although for revenue purposes, and not simply for police regulation.

Driving a fire truck to a fire so rapidly that on approaching an electric-street-car track it is impossible to stop in time to avoid a probable collision is held, in Garrity *v.* Detroit Citizens' St. R. Co. (Mich.) 37 L. R. A. 529, to constitute negligence on the part of the driver, although by the city ordinance he has the right of way.

Taxes.

Assessment of the property of an express company within the state by including the values of intangible property due to the fact that the property is a portion of a large profit-producing plant extending into other states is held constitutional in Wells, Fargo, & Co.'s Express *v.* Crawford County (Ark.) 37 L. R. A. 371.

Moneys and securities kept in the state for buying and selling property and making loans and investments are held, in Buck *v.* Miller (Ind.) 37 L. R. A. 384, to be subject to taxation whether the owner is domiciled in the state or not, and whether he conducts the business personally or by an agent.

Taxation of funds in the hands of a receiver of a mutual benefit assessment society which has done business in various states is upheld in Schmidt *v.* Failey (Ind.) 37 L. R. A. 442, although the funds had been collected in other states and turned over to the receiver on the understanding that holders of certificates in the different states should be ratably paid.

The place at which a vessel is taxable is held, in Johnson *v.* De Bary-Baya Merchants' Line (Fla.) 37 L. R. A. 518, to be primarily and presumptively the port at which it is registered, and the vessels of a nonresident corporation, duly registered at the home port of the company, are held not to be taxable in another state.

Wills.

The revocation of a will by the mere execution of a subsequent will without clause of revocation is denied, in Cheever *v.* North (Mich.) 37 L. R. A. 561, but it is held that the destruction of the later will revives the former one.

Witnesses.

Inability to comprehend the obligation of a note, or to understand and intelligently answer the questions put by the court upon *voir dire* examination, is held, in State *v.* Meyers (Neb.) 37 L. R. A. 423, to render a person incompetent to testify as a witness.

Judges.

William H. Vredenburgh is appointed to succeed the late Judge William L. Dayton on the bench of the court of errors and appeals of New Jersey. Judge Vredenburgh is an able lawyer whose appointment, says the New Jersey Law Journal, gives general satisfaction throughout the state.

Many tributes to Chief Judge Andrews on the occasion of his retirement from the New York court of appeals are published with his portrait in the "Albany Law Journal" of December 18, 1897. There is a sketch of the Judge and the court by Simon W. Rosendale, with personal tributes from his successor, Chief Judge Parker, Judge Rufus W. Peckham, Judges Francis M. Finch, Robert Earl, Geo. F. Danforth, and Edward Patterson, as well as from James C. Carter, Joseph H. Choate, and John G. Milburn. Every New York lawyer ought to have and preserve this number of the 'Albany Law Journal."

A New Periodical.

A new magazine of law and business matters, beginning with September last, is "The Legal Adviser," of Denver, Colo., edited by J. Warner Mills. It publishes in full all Colorado Federal cases in addition to valuable legal articles and legal news of much variety.

New Books.

"Revised Laws of Louisiana." Annotated. By Solomon Wolff. F. F. Hansell & Bro., New Orleans, La. 1 Vol. $12.

"The Shareholders' and Directors' Manual." By J. D. Warde. Parliament Buildings, Toronto. 1 Vol. $2.

Recent Articles in Law Journals and Reviews.

"Municipal Corporations,—Liability for Condition of Jail."—3 Virginia Law Register, 534.

"Trade Secrets,—Protection by Injunction."—3 Virginia Law Register, 536.

"Vendor and Vendee,—Implied Easements."—3 Virginia Law Register, 536.

"Game Laws,—Virginia Statute Prohibiting the Killing of Partridges."—3 Virginia Law Register, 540.

"The Trial of Aaron Burr."—3 Virginia Law Register, 477.

"Lawmaking."—3 Virginia Law Register, 506.

"Sales of Chattels,—Retention of Possession by Seller."—3 Virginia Law Register, 501.

"International Law."—36 American Law Register & Review, N. S., 701.

"The Administration of Justice in Japan."—36 American Law Register & Review, N. S., 714.

"Jurisdiction of Nonresidents."—4 New York Annotated Cases, 243.

"Preference on the Calendar."—4 New York Annotated Cases, 253.

"Testator's Subscription at End of Will."—4 New York Annotated Cases, 261.

"Suspension of Right to Sue by Acceptance of Note, etc."—4 New York Annotated Cases, 282.

"Can an Infant Recover for Injuries Received while en Ventre Sa Mère?"—30 Chicago Legal News, 90.

"Secondary Evidence,—Where Written Instrument is out of the Jurisdiction."—45 Central Law Journal, 368.

"Valued Policy Law,—Total Loss,—Arbitration."—45 Central Law Journal, 373.

"Development of Naturalization Laws."—25 Washington Law Reporter, 689.

"The Jurisdiction of English Courts over Private Property of Foreign Sovereigns Situated in England."—103 Law Times, 500.

"Collusion in Divorce,"—103 Law Times, 501.

"Possession of Stolen Property as Evidence of Guilt."—45 Central Law Journal, 388.

"Beneficiary,—Subsequent Designation."—45 Central Law Journal, 394.

"The New Landlord and Tenant."—17 Canadian Law Times, 253.

"Discovery under the Judicature Acts, 1873, 1875." Part II.—11 Harvard Law Review, 205.

"The Judicial Use of Torture." Part I.—11 Harvard Law Review, 220.

"Arbitration as a Condition Precedent."—11 Harvard Law Review, 234.

"Restitution or Unjust Enrichment."—11 Harvard Law Review, 249.

"The Rationale of Causation in Actions of Tort."—33 Canadian Law Journal, 713.

"The Law of Trademarks."—6 Michigan Law Journal, 257.

"The Incontestable Clause in a Life Insurance Policy."—45 Central Law Journal, 425.

"Marriage,—Common-Law Marriages,—Evidence."—45 Central Law Journal, 430.

"Special Laws as to Municipal Corporations under the Constitution of Ohio."—3 Western Reserve Law Journal, 149.

"Some Peculiarities of our National Mining Law."—7 Yale Law Journal, 53.

"The Influence of the Eighteenth Novel of Justinian." II.—7 Yale Law Journal, 67.

"Blue Laws of New Haven."—7 Yale Law Journal, 75.

"Chapters in the English Law of Lunacy."—9 Green Bag, 527.

"Government by Injunction."—9 Green Bag, 540.

"A Legal Relic." [A Seal]—9 Green Bag, 544.

The Humorous Side.

HOLDING IT UNDER ADVISEMENT.—A Missouri justice of the peace at the close of a case announced with great dignity: "I will hold this case under advisement until next Monday morning, at which time I will render judgment for the plaintiff."

FORCE OF HABIT.—It is said of an Illinois judge who, as an attorney, had been somewhat noted as an objector, that during his first term on the bench when an improper question was asked by a lawyer, he exclaimed, "I object." As the hilarity in the court room subsided, he said with great dignity, "That objection is sustained." No one took exception.

THE JUDGE'S HANDWRITING.—After long delay, the jury in an Illinois case to whom the judge had given a charge written by himself as to the mode of computing the recovery, if any, came in and reported in favor of the plaintiff, but without having made the computation. The court, somewhat impatiently, informed them that they must again retire and compute the amount as he had instructed them. But the foreman arose and said, "Well, judge, the trouble was none of us could read your writing. We all took a try at it and could not make out a word of it, so we had to do the best we could without any instructions. The judge said hereafter he would have all instructions typewritten.

OFFICIAL TEARS.—Enthusiasm and emotion in an official document appear for once at least in an ancient report by a Mexican officer who had been commissioned to place a grantee in possession of land. He says: "I took him by the hand and led him over the whole tract, he shouting and plucking up grass and throwing stones in the name of the King, saying, 'Long live our beloved monarch, Don Fernando VII., whom God may preserve,' with hurrahs and shouts, and I shed tears of delight at his acclamations."

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